

**BEFORE THE
PHYSICIAN ASSISTANT BOARD
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	
Against:)	
)	
EMMANUEL SAWAYA, P.A.)	Case No. 950-2015-000737
)	
Physician Assistant)	
License No. PA 20007)	
)	
Respondent)	
_____)	

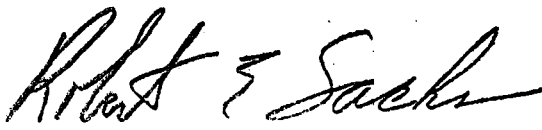
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Physician Assistant Board, Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 8, 2018.

IT IS SO ORDERED January 9, 2018.

PHYSICIAN ASSISTANT BOARD

By: 

Robert E. Sachs, P.A., Chair

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
4 State Bar No. 179733
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 897-2655
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
PHYSICIAN ASSISTANT BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 950-2015-000737

12 EMMANUEL SAWAYA, P.A.

OAH No. 2017040050

13 403 West F Street
14 Ontario, California 91762

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Physician Assistant License No. PA-20007,

16 Respondent.
17

18 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Maureen L. Forsyth ("Complainant") is the Executive Officer of the Physician
22 Assistant Board ("Board"). She brought this action solely in her official capacity and is
23 represented in this matter by Xavier Becerra, Attorney General of the State of California, by
24 Rebecca L. Smith, Deputy Attorney General.

25 2. Emmanuel Sawaya, P.A. ("Respondent") is represented in this proceeding by attorney
26 Miranda McCroskey, whose address is 1432 Edinger Avenue, Suite 240, Tustin, California
27 92780.

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1 3. On October 9, 2008, the Board issued Physician Assistant License No. PA-20007 to
2 Respondent. That license was in full force and effect at all times relevant to the charges brought
3 in Accusation No. 950-2015-000737, and will expire on February 28, 2018, unless renewed.

4 **JURISDICTION**

5 4. Accusation No. 950-2015-000737 was filed before the Board, and is currently
6 pending against Respondent. The Accusation and all other statutorily required documents were
7 properly served on Respondent on March 2, 2017. Respondent timely filed his Notice of Defense
8 contesting the Accusation.

9 5. A copy of Accusation No. 950-2015-000737 is attached as Exhibit A and is
10 incorporated herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 6. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 950-2015-000737. Respondent has also carefully read,
14 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
15 Disciplinary Order.

16 7. Respondent is fully aware of his legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
18 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
19 to the issuance of subpoenas to compel the attendance of witnesses and the production of
20 documents; the right to reconsideration and court review of an adverse decision; and all other
21 rights accorded by the California Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 950-2015-000737.

27 10. Respondent agrees that his Physician Assistant License is subject to discipline and he
28 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Physician Assistant Board. Respondent understands and agrees that counsel for Complainant and the staff of the Physician Assistant Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format ("PDF") and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

1. **IT IS HEREBY ORDERED THAT** Physician Assistant License No. PA-20007 issued to Respondent Emmanuel Sawaya, P.A. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years on the following terms and conditions.

2. **CLINICAL DIAGNOSTIC EVALUATION (CDE)**. Within thirty (30) days from the effective date of the Decision and Order and thereafter as required by the Board, Respondent shall undergo a CDE from a licensed practitioner who holds a valid, unrestricted license to conduct CDEs, has three (3) years' experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with accepted professional standards for conducting a substance abuse CDE.

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1 Respondent shall undergo a CDE to determine whether Respondent has a substance abuse
2 problem and whether Respondent is a threat to himself or others. The evaluator shall make
3 recommendations for substance abuse treatment, practice restrictions, or other recommendations
4 related to Respondent's rehabilitation and safe practice.

5 Respondent shall not be evaluated by an evaluator that has a financial, personal, or business
6 relationship with Respondent within the last five (5) years. The evaluator shall provide an
7 objective, unbiased, and independent evaluation.

8 During the evaluation, if Respondent is determined to be a threat to himself or others, the
9 evaluator shall notify the Board within (twenty-four) 24 hours of such a determination.

10 Respondent may return to either full-time or part-time work if the Board determines he is fit
11 to do so based upon consideration of the CDE report and the following criteria:

- 12 • License type;
- 13 • Licensee's history;
- 14 • Documented length of sobriety/time that has elapsed since last
substance use;
- 15 • Scope and pattern of use;
- 16 • Treatment history;
- Medical history and current medical condition;
- Nature, duration and severity of substance abuse; and,
- Whether the licensee is a threat to himself or others.

17 The Board shall determine whether or not Respondent is safe to return to full-time or part-
18 time work, and what restrictions shall be imposed on Respondent. However, Respondent shall
19 not return to practice until he has thirty (30) days of negative drug tests.

20 If Respondent is required to participate in inpatient, outpatient, or any other type of
21 treatment, the Board shall take into consideration the recommendation of the CDE, license type,
22 licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history,
23 medical history, current medical condition, nature, duration and severity of substance abuse and
24 whether the licensee is a threat to himself or others.

25 In the event that any Condition Applying the Uniform Standards requires interpretation or
26 clarification, the Uniform Standards shall be controlling.

27 3. ABSTAIN FROM THE USE OF ALCOHOL. Respondent shall abstain completely
28 from the use of alcoholic beverages.

1 4. ABSTAIN FROM THE USE OF CONTROLLED SUBSTANCES AND
2 DANGEROUS DRUGS. Respondent shall abstain completely from personal use, possession,
3 injection, consumption by any route, including inhalation of all controlled substances as defined
4 in the California Uniform, Controlled Substances Act. This prohibition does not apply to
5 medications lawfully prescribed to Respondent for a bona fide illness or condition by a
6 practitioner licensed to prescribe such medications. Within fifteen (15) calendar days of
7 receiving any lawful prescription medications, Respondent shall notify the recovery program in
8 writing of the following: prescriber's name, address, and telephone number; medication name and
9 strength, issuing pharmacy name, address, and telephone number. Respondent shall also provide
10 a current list of prescribed medication with the prescriber's name, address, and telephone number
11 on each quarterly report submitted. Respondent shall provide the probation monitor with a signed
12 and dated medical release covering the entire probation period.

13 Respondent shall identify for the Board's approval a single coordinating physician and
14 surgeon who shall be aware of Respondent's history of substance abuse and who will coordinate
15 and monitor any prescriptions for Respondent for dangerous drugs, and controlled substances.
16 Once a Board-approved physician and surgeon has been identified, Respondent shall provide a
17 copy of the Initial Probationary License Decision and Order, Statement of Issues or Accusation,
18 Decision and Order, or Stipulated Decision and Order to the physician and surgeon. The
19 coordinating physician and surgeon shall report to the Board or its designee on a quarterly basis
20 Respondent's compliance with this condition.

21 The Board may require that only a physician and surgeon who is a specialist in addictive
22 medicine be approved as the coordinating physician and surgeon.

23 If Respondent has a positive drug screen for any substance not legally authorized,
24 Respondent shall be contacted and instructed to leave work and ordered by the Board to cease any
25 practice and may not practice unless and until notified by the Board. The Board will notify
26 Respondent's employer, if any, and worksite monitor, if any, that Respondent may not practice.
27 If the Board files a petition to revoke probation or an accusation based upon the positive drug
28 screen, Respondent shall be automatically suspended from practice pending the final decision on

1 the petition to revoke probation or accusation. This period of suspension will not apply to the
2 reduction of this probationary period.

3 5. DRUG AND ALCOHOL RECOVERY MONITORING PROGRAM. Within fifteen
4 (15) calendar days from the effective date of this Decision and Order, Respondent shall enroll,
5 participate in, and successfully complete the Board's drug and alcohol recovery monitoring
6 program at Respondent's cost until the drug and alcohol recovery monitoring program determines
7 that participation in the drug and alcohol recovery monitoring program is no longer necessary.

8 Respondent shall comply with all components of the drug and alcohol recovery monitoring
9 program. Respondent shall sign a release authorizing the drug and alcohol recovery monitoring
10 program to report all aspects of participation of the drug and alcohol recovery monitoring
11 program as requested by the Board or its designee.

12 Failure to comply with requirements of the drug and alcohol recovery monitoring program,
13 terminating the program without permission or being expelled for cause shall constitute a
14 violation of probation by Respondent and shall be immediately suspended from the practice as a
15 physician assistant.

16 Probation shall be automatically extended until Respondent successfully completes the
17 program.

18 6. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to and pay
19 for any random and directed biological fluid or hair sample, breath alcohol or any other mode of
20 testing required by the Board or its designee.

21 Respondent shall be subject to a minimum of fifty-two (52) random tests per year within
22 the first year of probation and a minimum of thirty-six (36) random tests per year, for the duration
23 of the probationary term up to five years and a minimum of one (1) test per month in each year of
24 probation after the fifth year provided that there have been no positive test results during the
25 previous five (5) years.

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1 The Board or its designee may require less frequent testing if any of the following applies:

- 2 • Where Respondent has previously participated in a treatment or
3 monitoring program requiring testing, the board or its designee may
4 consider that prior testing record in applying the testing frequency
5 schedule described above;
- 6 • Where the basis for probation or discipline is a single incident or
7 conviction involving alcohol or drugs, or two incidents or convictions
8 involving alcohol or drugs that were at least seven (7) years apart, that did
9 not occur at work or on the way to or from work, the Board or its
10 designee may skip the first-year testing frequency requirement(s);
- 11 • Where Respondent is not employed in any health care field, frequency
12 of testing may be reduced to a minimum of twelve (12) tests per year. If
13 Respondent wishes to thereafter return to employment in a health care
14 field, Respondent shall be required to test at least once a week for a
15 period of sixty (60) days before commencing such employment, and shall
16 thereafter be required to test at least once a week for a full year, before
17 Respondent may be reduced to a testing frequency of no less than twenty-
18 four (24) tests per year;
- 19 • Where Respondent has a demonstrated period of sobriety and/or non-
20 use, the Board or its designee may reduce the testing frequency to no less
21 than twenty-four (24) tests per year.

22 Respondent shall make daily contact as directed by the Board to determine if he must
23 submit to drug testing. Respondent shall have the test performed by a Board-approved laboratory
24 certified and accredited by the U.S. Department of Health and Human Services on the same day
25 that he is notified that a test is required. This shall ensure that the test results are sent
26 immediately to the Board. Failure to comply within the time specified shall be considered an
27 admission of a positive drug screen and constitute a violation of probation. If the test results in a
28 determination that the urine was too diluted for testing, the result shall be considered an
admission of a positive urine screen and constitutes a violation of probation. If a positive result is
obtained, the Board may require Respondent to immediately undergo a physical examination and
to complete laboratory or diagnostic testing to determine if any underlying physical condition has
contributed to the diluted result and to suspend Respondent's license to practice. Any such
examination or laboratory and testing costs shall be paid by Respondent. If it is determined
Respondent altered the test results, the result shall be considered an admission of a positive urine
screen and constitutes a violation of probation and Respondent must cease practicing.
Respondent shall not resume practice until notified by the Board. If Respondent tests positive for

1 a banned substance, Respondent shall be contacted and instructed to leave work and ordered to
2 cease all practice. Respondent shall not resume practice until notified by the Board. All
3 alternative drug testing sites due to vacation or travel outside of California must be approved by
4 the Board prior to the vacation or travel.

5 7. FACILITATED GROUP SUPPORT MEETINGS. Within fifteen (15) days from the
6 effective date of the decision, Respondent shall submit to the Board or its designee for prior
7 approval the name of one or more meeting facilitators. Respondent shall participate in facilitated
8 group support meetings within fifteen (15) days after notification of the Board's or designee's
9 approval of the meeting facilitator. When determining the type and frequency of required
10 facilitated group support meeting attendance, the Board or its designee shall give consideration to
11 the following:

- 12 • The licensee's history;
- 13 • The documented length of sobriety/time that has elapsed since
substance abuse;
- 14 • The recommendation of the clinical evaluator;
- 15 • The scope and pattern of use;
- The licensee's treatment history; and ,
- The nature, duration, and severity of substance abuse.

16 Verified documentation of attendance shall be submitted by Respondent with each quarterly
17 report. Respondent shall continue attendance in such a group for the duration of probation unless
18 notified by the Board that attendance is no longer required.

19 If a facilitated group support meeting is ordered, the group facilitator shall meet the
20 following qualifications and requirements:

- 21 1. The group meeting facilitator shall have a minimum of three (3) years
experience in the treatment and rehabilitation of substance abuse, and
22 shall be licensed or certified by the state or other nationally certified
organizations.
- 23 2. The group meeting facilitator shall not have a financial relationship,
24 personal relationship, or business relationship with the licensee in the last
one (1) year.
- 25 3. The group facilitator shall provide to the Board or its designee a signed
26 document showing the licensee's name, the group name, the date and
location of the meeting, the licensee's attendance, and the licensee's level
27 of participation and progress.

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1 4. The group meeting facilitator shall report any unexcused absence to
2 the Board or its designee within twenty-four (24) hours.

3 8. WORK SITE MONITOR. Respondent shall have a worksite monitor as required by
4 this term. The worksite monitor shall not have any current or former financial, personal, or
5 familial relationship with the licensee, or other relationship that could reasonably be expected to
6 compromise the ability of the monitor to render impartial and unbiased reports to the Board.
7 Respondent's employer or supervising physician may serve as the worksite monitor. However,
8 under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

9 The worksite monitor's license scope of practice shall include the scope of practice of the
10 licensee who is being monitored or be another health care professional if no monitor with like
11 scope of practice is available.

12 The worksite monitor shall have an active unrestricted license, with no disciplinary action
13 within the last five (5) years.

14 The worksite monitor shall sign an affirmation that he or she has reviewed the terms and
15 conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by
16 the Board.

17 The worksite monitor must adhere to the following required methods of monitoring the
18 licensee:

19 a) Have face-to-face contact with the licensee at least once per week in the work
20 environment or more frequently if required by the Board.

21 b) Interview other staff in the office regarding the licensee's behavior, if applicable.

22 c) Review the licensee's work attendance.

23 The worksite monitor shall report to the Board as follows:

24 Any suspected substance abuse must be verbally reported to the Board and the licensee's
25 employer within one (1) business day of occurrence. If the occurrence is not during the Board's
26 normal business hours the verbal report must be within one (1) hour of the next business day. A
27 written report shall be submitted to the Board within 48 hours of occurrence.

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1 The worksite monitor shall complete and submit a written report monthly or as directed by
2 the Board. The report shall include: the licensee's name; license number; worksite monitor's
3 name and signature; worksite monitor's license number; worksite location(s); dates licensee had
4 face-to-face contact with monitor; staff interviewed if applicable; attendance report; any change
5 in behavior and/or personal habits; any indicators leading to suspected substance abuse.

6 The licensee shall complete the required consent forms and sign an agreement with the
7 worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

8 If Respondent tests positive for a banned substance, the Board will immediately notify
9 Respondent's employer that Respondent's license has been ordered to cease practice.

10 9. MAJOR VIOLATIONS. If Respondent commits a major violation, Respondent shall
11 immediately upon notification by the Board, cease practice until notified otherwise in writing by
12 the Board.

13 Major Violations include, but are not limited to, the following:

- 14 1. Failure to complete a Board-ordered program;
- 15 2. Failure to undergo a required CDE;
- 16 3. Committing multiple minor violations of probation conditions;
- 17 4. Treating a patient while under the influence of drugs or alcohol;
- 18 5. Committing any drug or alcohol offense that is a violation of the
19 Business and Professions Code or state or federal law;
- 20 6. Failure to obtain biological testing for substance abuse;
- 21 7. Testing positive for a banned substance; and,
- 22 8. Knowingly using, making, altering, or possessing any object or product
23 in such a way as to defraud a drug test designed to detect the presence
24 of alcohol or a controlled substance.

25 10. APPROVAL OF SUPERVISING PHYSICIAN. Within thirty (30) days of the
26 effective date of this decision, Respondent shall submit to the Board or its designee for its prior
27 approval the name and license number of the supervising physician and a practice plan detailing
28 the nature and frequency of supervision to be provided. Respondent shall not practice until the
supervising physician and practice plan are approved by the Board or its designee.

Respondent shall have the supervising physician submit quarterly reports to the Board or its
designee.

If the supervising physician resigns or is no longer available, Respondent shall, within
fifteen (15) days, submit the name and license number of a new supervising physician for

1 approval. Respondent shall not practice until a new supervising physician has been approved by
2 the Board or its designee.

3 11. NOTIFICATION OF EMPLOYER AND SUPERVISING PHYSICIAN.

4 Respondent shall notify his current and any subsequent employer and supervising physician(s) of
5 the discipline and provide a copy of the Accusation, Decision, and Order to each employer and
6 supervising physician(s) during his period of probation, before accepting or continuing
7 employment. Respondent shall ensure that each employer informs the Board or its designee, in
8 writing within thirty (30) days, verifying that the employer and supervising physician(s) have
9 received a copy of the Accusation, Decision, and Order.

10 This condition shall apply to any change(s) in place of employment.

11 Respondent shall provide to the Board or its designee the names, physical addresses,
12 mailing addresses, and telephone numbers of all employers, supervising physicians, and work site
13 monitor, and shall inform the Board or its designee in writing of the facility or facilities at which
14 the person practices as a physician assistant.

15 Respondent shall give specific, written consent to the Board or its designee to allow the
16 Board or its designee to communicate with the employer, supervising physician, or work site
17 monitor regarding the licensee's work status, performance, and monitoring.

18 12. OBEY ALL LAWS. Respondent shall obey all federal, state, and local laws, and all
19 rules governing the practice of medicine as a physician assistant in California, and remain in full
20 compliance with any court ordered criminal probation, payments, and other orders.

21 13. QUARTERLY REPORTS. Respondent shall submit quarterly declarations under
22 penalty of perjury on forms provided by the Board or its designee, stating whether there has been
23 compliance with all the conditions of probation.

24 14. OTHER PROBATION REQUIREMENTS. Respondent shall comply with the
25 Board's probation unit. Respondent shall, at all times, keep the Board and probation unit
26 informed of Respondent's business and residence addresses. Changes of such addresses shall be
27 immediately communicated in writing to the Board and probation unit. Under no circumstances

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1 shall a post office box serve as an address of record, except as allowed by California Code of
2 Regulations 1399.523.

3 Respondent shall appear in person for an initial probation interview with Board or its
4 designee within ninety (90) days of the decision. Respondent shall attend the initial interview at a
5 time and place determined by the Board or its designee.

6 Respondent shall, at all times, maintain a current and renewed physician assistant license.

7 Respondent shall also immediately inform the probation unit, in writing, of any travel to
8 any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than
9 thirty (30) days.

10 15. INTERVIEW WITH MEDICAL CONSULTANT. Respondent shall appear in
11 person for interviews with the Board's medical or expert physician assistant consultant upon
12 request at various intervals and with reasonable notice.

13 16. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
14 its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting
15 more than thirty (30) calendar days. Non-practice is defined as any period of time exceeding
16 thirty (30) calendar days in which Respondent is not practicing as a physician assistant.
17 Respondent shall not return to practice until the supervising physician is approved by the Board
18 or its designee.

19 If, during probation, Respondent moves out of the jurisdiction of California to reside or
20 practice elsewhere, including federal facilities, Respondent is required to immediately notify the
21 Board in writing of the date of departure and the date of return, if any.

22 Practicing as a physician assistant in another state of the United States or federal
23 jurisdiction while on active probation with the physician assistant licensing authority of that state
24 or jurisdiction shall not be considered non-practice.

25 All time spent in a clinical training program that has been approved by the Board or its
26 designee, shall not be considered non-practice. Non-practice due to a Board ordered suspension
27 or in compliance with any other condition or probation, shall not be considered a period of non-
28 practice.

1 Any period of non-practice, as defined in this condition, will not apply to the reduction of
2 the probationary term.

3 Periods of non-practice do not relieve Respondent of the responsibility to comply with the
4 terms and conditions of probation.

5 It shall be considered a violation of probation if for a total of two (2) years, Respondent
6 fails to practice as a physician assistant. Respondent shall not be considered in violation for non-
7 practice as long as Respondent is residing and practicing as a physician assistant in another state
8 of the United States and is on active probation with the physician assistant licensing authority of
9 that state, in which case the two (2) year period shall begin on the date probation is completed or
10 terminated in that state.

11 17. UNANNOUNCED CLINICAL SITE VISIT. The Board or its designee may make
12 unannounced clinical site visits at any time to ensure that Respondent is complying with all terms
13 and conditions of probation.

14 18. CONDITION FULFILLMENT. A course, evaluation, or treatment completed after
15 the acts that gave rise to the charges in the accusation, but prior to the effective date of the
16 Decision may, in the sole discretion of the Board or its designee, be accepted towards the
17 fulfillment of the condition.

18 19. COMPLETION OF PROBATION. Respondent shall comply with all financial
19 obligations (e.g., cost recovery, probation costs) no later than 60 (sixty) calendar days prior to the
20 completion of probation. Upon successful completion of probation, Respondent's license will be
21 fully restored.

22 20. VIOLATION OF PROBATION. If Respondent violates probation in any respect, the
23 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
24 carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is
25 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
26 matter is final, and the period of probation shall be extended until the matter is final.

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1 21. COST RECOVERY. Respondent is hereby ordered to reimburse the Physician
2 Assistant Board the amount of Two Thousand Seven Hundred Sixty Dollars (\$2,760.00) within
3 ninety (90) days from the effective date of this decision for its investigative costs. Failure to
4 reimburse the Board's costs for its investigation shall constitute a violation of the probation order,
5 unless the Board agrees in writing to payment by an installment plan because of financial
6 hardship. The filing of bankruptcy by Respondent shall not relieve Respondent of his
7 responsibility to reimburse the Board for its investigative costs.

8 22. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
9 with probation monitoring each and every year of probation, as designated by the Board, which
10 may be adjusted on an annual basis. The costs shall be made payable to the Physician Assistant
11 Board and delivered to the Board no later than January 31 of each calendar year.

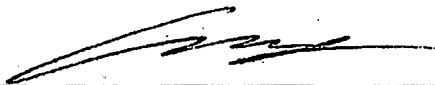
12 23. VOLUNTARY LICENSE SURRENDER. Following the effective date of this
13 probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise
14 unable to satisfy the terms and conditions of probation, Respondent may request, in writing, the
15 voluntarily surrender of Respondent's license to the Board. Respondent's written request to
16 surrender his license shall include the following: his name, license number, case number, address
17 of record, and an explanation of the reason(s) why Respondent seeks to surrender his license.
18 The Board reserves the right to evaluate Respondent's request and to exercise its discretion
19 whether to grant the request, or to take any other action deemed appropriate and reasonable under
20 the circumstances. Respondent shall not be relieved of the requirements of his probation unless
21 the Board or its designee notifies Respondent in writing that Respondent's request to surrender
22 his license has been accepted. Upon formal acceptance of the surrender, Respondent shall, within
23 fifteen (15) days, deliver Respondent's wallet and wall certificate to the Board or its designee and
24 shall no longer practice as a physician assistant. Respondent will no longer be subject to the
25 terms and conditions of probation and the surrender of Respondent's license shall be deemed
26 disciplinary action. If Respondent re-applies for a physician assistant license, the application
27 shall be treated as a petition for reinstatement of a revoked license.

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1 ACCEPTANCE

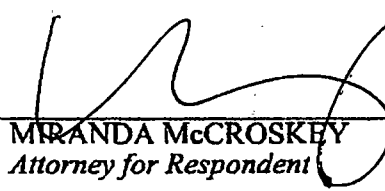
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Miranda McCroskey. I understand the stipulation and the effect it
4 will have on my Physician Assistant License. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Physician Assistant Board.

7
8 DATED: 11/20/17


9 EMMANUEL SAWAYA, P.A.
Respondent

10
11 I have read and fully discussed with Respondent Emmanuel Sawaya, P.A. the terms and
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
13 I approve its form and content.

14 DATED: 11/20/17


15 MIRANDA McCROSKEY
Attorney for Respondent

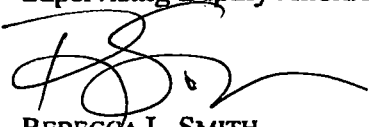
16
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Physician Assistant Board.

20 Dated: November 22, 2017

21 Respectfully submitted,

22 XAVIER BECERRA
Attorney General of California
23 ROBERT MCKIM BELL
Supervising Deputy Attorney General

24 
25 REBECCA L. SMITH
26 Deputy Attorney General
Attorneys for Complainant

27 LA2017504281

Exhibit A

Accusation No. 950-2015-000737

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-2655
Facsimile: (213) 897-9395
Attorneys for Complainant

BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 950-2015-000737

EMMANUEL SAWAYA, P.A.
403 West F Street
Ontario, California 91762

ACCUSATION

Physician Assistant License No. PA-20007,

Respondent.

Complainant alleges:

PARTIES

1. Maureen L. Forsyth (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs (Board).

2. On October 9, 2008, the Board issued Physician Assistant License number PA-20007 to Emmanuel Sawaya, P.A. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 3527 of the Code states:

2 “(a) The board may order the denial of an application for, or the issuance subject to terms
3 and conditions of, or the suspension or revocation of, or the imposition of probationary conditions
4 upon a physician assistant license after a hearing as required in Section 3528 for unprofessional
5 conduct which includes, but is not limited to, a violation of this chapter, a violation of the
6 Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board
7 of California.

8 “...

9 “(f) The board may order the licensee to pay the costs of monitoring the probationary
10 conditions imposed on the license.

11 “(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license
12 by operation of law or by order or decision of the board or a court of law, the placement of a
13 license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive
14 the board of jurisdiction to commence or proceed with any investigation of, or action or
15 disciplinary proceeding against, the licensee or to render a decision suspending or revoking the
16 license.”

17 5. Section 3531 of the Code states:

18 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
19 charge of a felony or of any offense which is substantially related to the qualifications, functions,
20 or duties of the business or profession to which the license was issued is deemed to be a
21 conviction within the meaning of this chapter. The board may order the license suspended or
22 revoked, or shall decline to issue a license when the time for appeal has elapsed, or the judgment
23 of conviction has been affirmed on appeal or when an order granting probation is made
24 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
25 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter
26 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information
27 or indictment.”

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1 6. California Code of Regulations, title 16, section 1399.521 states:

2 "In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the board
3 may deny, issue subject to terms and conditions, suspend, revoke or place on probation a
4 physician assistant for the following causes: (a) Any violation of the State Medical Practice Act
5 which would constitute unprofessional conduct for a physician and surgeon..."

6 7. Section 2227 of the Code states:

7 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
8 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
9 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
10 action with the board, may, in accordance with the provisions of this chapter:

11 "(1) Have his or her license revoked upon order of the board.

12 "(2) Have his or her right to practice suspended for a period not to exceed one year upon
13 order of the board.

14 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
15 order of the board.

16 "(4) Be publicly reprimanded by the board. The public reprimand may include a
17 requirement that the licensee complete relevant educational courses approved by the board.

18 "(5) Have any other action taken in relation to discipline as part of an order of probation, as
19 the board or an administrative law judge may deem proper.

20 "(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
21 review or advisory conferences, professional competency examinations, continuing education
22 activities, and cost reimbursement associated therewith that are agreed to with the board and
23 successfully completed by the licensee, or other matters made confidential or privileged by
24 existing law, is deemed public, and shall be made available to the public by the board pursuant to
25 Section 803.1."

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1 8. Section 2234 of the Code states:

2 "The board shall take action against any licensee who is charged with unprofessional
3 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
4 limited to, the following:

5 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
6 violation of, or conspiring to violate any provision of this chapter.

7 "...

8 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
9 participate in an interview by the board. This subdivision shall only apply to a certificate holder
10 who is the subject of an investigation by the board"

11 9. Section 2236 of the Code states:

12 "(a) The conviction of any offense substantially related to the qualifications, functions, or
13 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
14 chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction
15 occurred.

16 "(b) The district attorney, city attorney, or other prosecuting agency shall notify the
17 Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor
18 immediately upon obtaining information that the defendant is a licensee. The notice shall identify
19 the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall
20 also notify the clerk of the court in which the action is pending that the defendant is a licensee,
21 and the clerk shall record prominently in the file that the defendant holds a license as a physician
22 and surgeon.

23 "(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
24 after the conviction, transmit a certified copy of the record of conviction to the board. The
25 division may inquire into the circumstances surrounding the commission of a crime in order to fix
26 the degree of discipline or to determine if the conviction is of an offense substantially related to
27 the qualifications, functions, or duties of a physician and surgeon.

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1 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
2 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
3 shall be conclusive evidence of the fact that the conviction occurred.”

4 10. Section 2239 of the Code states:

5 “(a) The use or prescribing for or administering to himself or herself, of any controlled
6 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
7 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
8 any other person or to the public, or to the extent that such use impairs the ability of the licensee
9 to practice medicine safely or more than one misdemeanor or any felony involving the use,
10 consumption, or self-administration of any of the substances referred to in this section, or any
11 combination thereof, constitutes unprofessional conduct. The record of the conviction is
12 conclusive evidence of such unprofessional conduct.

13 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
14 deemed to be a conviction within the meaning of this section. The Division of Medical Board
15 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
16 may order the denial of the license when the time for appeal has elapsed or the judgment of
17 conviction has been affirmed on appeal or when an order granting probation is made suspending
18 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
19 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
20 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
21 information, or indictment.”

22 11. Section 490 of the Code states:

23 “(a) In addition to any other action that a board is permitted to take against a licensee, a
24 board may suspend or revoke a license on the ground that the licensee has been convicted of a
25 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
26 or profession for which the license was issued.

27 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
28 discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code.

9 “(d) The Legislature hereby finds and declares that the application of this section has been
10 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
11 554, and that the holding in that case has placed a significant number of statutes and regulations
12 in question, resulting in potential harm to the consumers of California from licensees who have
13 been convicted of crimes. Therefore, the Legislature finds and declares that this section
14 establishes an independent basis for a board to impose discipline upon a licensee, and that the
15 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
16 to, but rather are declaratory of, existing law.”

17 12. Section 493 of the Code states:

18 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
19 the department pursuant to law to deny an application for a license or to suspend or revoke a
20 license or otherwise take disciplinary action against a person who holds a license, upon the
21 ground that the applicant or the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, and duties of the licensee in question, the record of conviction of the
23 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
24 and the board may inquire into the circumstances surrounding the commission of the crime in
25 order to fix the degree of discipline or to determine if the conviction is substantially related to the
26 qualifications, functions, and duties of the licensee in question.

27 “...”

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1 13. California Code of Regulations, title 16, section 1360, states:

2 "For the purposes of denial, suspension or revocation of a license, certificate or permit
3 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
4 considered to be substantially related to the qualifications, functions or duties of a person holding
5 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
6 evidences present or potential unfitness of a person holding a license, certificate or permit to
7 perform the functions authorized by the license, certificate or permit in a manner consistent with
8 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
9 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
10 violation of, or conspiring to violate any provision of the Medical Practice Act."

11 **COST RECOVERY**

12 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 **FACTUAL SUMMARY**

17 15. On March 30, 2016, in proceedings entitled *The People of the State of California v.*
18 *Emmanuel Sawaya*, case number C355073 in the San Diego County Superior Court, Respondent,
19 upon his guilty plea, was convicted of driving a vehicle while having a .08% or higher blood
20 alcohol content, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. At
21 that time, pursuant to Vehicle Code section 23578, Respondent also admitted that he was guilty of
22 having a concentration of alcohol in his blood of 0.15 percent or more, by weight. In addition,
23 Respondent admitted that he had a prior conviction on November 21, 2006, driving a vehicle
24 while having a .08% or higher blood alcohol content, in violation of Vehicle Code section 23152,
25 subdivision (b), a misdemeanor.

26 16. Respondent was placed on five years probation, agreeing to the following terms and
27 conditions:

28 A. Obey all laws;

- B. Serve four (4) days in custody at the San Diego Central Detention Facility;
- C. Pay fines and assessments;
- D. Complete twelve (12) days of volunteer work with the Public Service Program;
- E. Complete the multiple conviction program;
- F. Complete the Mothers Against Drunk Drivers (MADD) Program.

17. The circumstances leading to Respondent's conviction are as follows:

At approximately 6:00 p.m. on October 4, 2015, a California Highway Patrol (CHP) officer observed a gray Hyundai traveling northbound on SR-125, north of Navajo Road, at a high rate of speed. The CHP officer estimated the vehicle's speed to be approximately 80 miles per hour and confirmed the same by "Lidar" device. The CHP officer pulled Respondent's vehicle over to the right shoulder of SR-125. Respondent had two adult passengers in the vehicle with him. The CHP officer observed that Respondent displayed symptoms of intoxication including a strong odor of alcohol emitting from his breath, red and watery eyes and slurred speech. Respondent reported having two beers at 3:00 p.m. Field Sobriety Tests were conducted and the CHP officer concluded that Respondent was obviously impaired. Respondent was placed under arrest for being so intoxicated as to be a danger to himself or others. He was transported to the El Cajon CHP office where he submitted to a breath test with results of a .220/.231 % BAC (blood alcohol content). He was then transported to the San Diego County Jail for booking.

18. On November 30, 2015, the Board received a Department of Justice notification regarding Respondent's arrest, at which time the Board opened an investigation regarding the same.

19. On August 10, 2016, Respondent agreed to a voluntary urinalysis which was subsequently reported on August 15, 2016 as being positive for marijuana metabolite at 92 ng/ml.

20. On August 30, 2016, Respondent refused the Board's attempt to obtain a second voluntary urinalysis and declined to speak with the Board investigator regarding the investigation.

21. In response the Board investigator's request for further information regarding the investigation and another request for an interview with Respondent, on October 6, 2016, counsel for Respondent indicated that Respondent will not make himself available for an interview and

1 provided the Board investigator with a copy of Respondent's Marijuana Recommendation
2 Certificate issued on October 5, 2016 (for the time period of October 5, 2016 through October 4,
3 2017). No Marijuana Recommendation Certificate was provided for the time period Respondent
4 tested positive for marijuana metabolite.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Conviction of a Crime)**

7 22. By reason of the facts set forth above in paragraphs 15 through 17, Respondent's
8 physician assistant license is subject to disciplinary action under section 3527, subdivision (a),
9 section 3531, section 2234, subdivision (a), section 2236, subdivision (a) and 490 of the Code, as
10 well as, California Code of Regulations, title 16, sections 1360 and 1399.521, in that Respondent
11 has been convicted of a crime substantially related to the qualifications, function, or duties of a
12 physician assistant.

13 23. Respondent's acts and/or omissions, as set forth in paragraphs 15 through 17 above,
14 whether proven individually, jointly, or in any combination thereof, constitute a conviction of a
15 crime substantially related to the qualifications, functions or duties of a physician assistant
16 pursuant to section 3527, subdivision (a), section 3531, section 2234, subdivision (a), section
17 2236, subdivision (a) and 490 of the Code, as well as, California Code of Regulations, title 16,
18 sections 1360 and 1399.521. Therefore, cause for discipline exists.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Use of Alcoholic Beverages in a Dangerous Manner)**

21 24. By reason of the facts set forth above in paragraphs 15 through 17, Respondent's
22 physician assistant license is subject to disciplinary action under section 3527, subdivision (a),
23 section 2234, subdivision (a) and section 2239 of the Code, as well as, California Code of
24 Regulations, title 16, sections 1360 and 1399.521, in that Respondent used alcoholic beverages to
25 the extent, or in such a manner, as to be dangerous and injurious to himself, or to any other person
26 or to the public.

27 25. Respondent's acts and/or omissions, as set forth in paragraphs 15 through 17 above,
28 whether proven individually, jointly, or in any combination thereof, constitute the use of alcoholic

1 beverages to the extent, or in such a manner, as to dangerous and injurious to himself, or to any
2 other person or to the public pursuant to section 3527, subdivision (a), section 2234, subdivision
3 (a), section 2239 of the Code, as well as, California Code of Regulations, title 16, sections 1360
4 and 1399.521. Therefore, cause for discipline exists.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Violation of the Medical Practice Act)**

7 26. By reason of the facts set forth above in paragraphs 15 through 17, Respondent's
8 physician assistant license is subject to disciplinary action under section 3527, subdivision (a),
9 section 2234, subdivision (a), of the Code and California Code of Regulations, title 16, sections
10 1360 and 1399.521, in that Respondent engaged in unprofessional conduct which breaches the
11 rules or ethical code of the medical profession, or conduct which is unbecoming to a member in
12 good standing of the medical profession, and which demonstrates an unfitness to practice as a
13 physician assistant.

14 27. Respondent's acts and/or omissions, as set forth in paragraphs 15 through 17 above,
15 whether proven individually, jointly, or in any combination thereof, constitute engaging in
16 unprofessional conduct which breaches the rules or ethical code of the medical profession, or
17 conduct which is unbecoming to a member in good standing of the medical profession, and which
18 demonstrates an unfitness to practice as a physician assistant pursuant to section 3527,
19 subdivision (a), section 2234, subdivision (a), of the Code and California Code of Regulations,
20 title 16, sections 1360 and 1399.521. Therefore, cause for discipline exists.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Repeated Failure to Participate in an Interview with the Board)**

23 28. By reason of the facts set forth above in paragraphs 18 through 21, Respondent's
24 physician assistant license is subject to disciplinary action under section 3527, subdivision (a) and
25 section 2234, subdivisions (a) and (h), in that Respondent failed, in the absence of good cause,
26 and in fact, refused to attend and participate in an interview with the Board, despite being the
27 subject of an investigation by the Board.

28 ///

29. Respondent's acts and/or omissions, as set forth in paragraphs 18 through 21 above, whether proven individually, jointly, or in any combination thereof, constitutes unprofessional conduct, in that Respondent failed, in the absence of good cause, and, in fact, refused to attend and participate in an interview with the Board, despite being the subject of an investigation by the Board pursuant to section 3527, subdivision (a) and section 2234, subdivisions (a) and (h). Therefore, cause for discipline exists.

DISCIPLINE CONSIDERATIONS

30. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on October 3, 2008, the Board issued a Decision and Order in Case No. 1E-2008-194104 in the Matter of the Application for Licensure of Respondent based upon Respondent's conviction in 2006 of driving a vehicle while having a .08% or higher blood alcohol content, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent was issued a physician assistant license on a three (3) year probationary basis, subject to various terms and conditions, including abstaining from drug use, abstaining from alcohol use and undergoing biological fluid testing. The October 3, 2008 Decision and Order is incorporated as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License Number PA-20007, issued to Emmanuel Sawaya, P.A.

2. Ordering Emmanuel Sawaya, P.A. to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: March 2, 2017



MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California

Complainant

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